Memorandum

MIAMI-DADE COUNTY

Date: January 22, 2009

Agenda Item No. 8(A)(1)(A)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Retroactive First Amendment, Prepaid Phone Cards Vending Machines at Miami International Airport between Miami-Dade County and Latin American Enterprises, Inc.

RECOMMENDATION

It is recommended that the Board approve the retroactive First Amendment to the Non-Exclusive Agreement for Prepaid Phone Card Vending Machines at Miami International Airport (MIA) with Latin American Enterprises, Inc. (LAE), to allow for the continuation of the prepaid phone card vending services at MIA.

SCOPE

Miami International Airport is located primarily within Commission District Six.

DELEGATED AUTHORITY

In accordance with Miami-Dade County Code Section 2-8.3 related to identifying delegation of Board authority contained within the subject agreement, the Aviation Director or designee has the authority to terminate the agreement.

FISCAL IMPACT/FUNDING SOURCE

In the Agreement, the County was to be paid a Minimum Annual Guarantee (MAG) as follows: Year 1 - $250,500.00; Year 2 - $250,500.00; and Year 3 - $600,500. Under the Retroactive First Amendment, the MAG has been revised for the third year as follows: $390,325.00 effective May 1, 2008, and $550,000.00 effective August 1, 2008.

In addition to the MAG, the concessionaire shall pay a percentage fee of twenty-five (25%) of the amount by which monthly gross revenues exceed the monthly portion of the MAG in U.S. funds. The 25% was contained in the original contract.

TRACK RECORD/MONITOR

Latin American Enterprises, Inc., has been issued notices of default three times, once for inadequate records and reports and twice for failure to make payments on time Issues were resolved satisfactorily during the curative period according to Miami-Dade Aviation Department's (MDAD) Commercial Operations Division Project Manager Ray Diaz, who monitors the contract.

COMPLIANCE DATA

There is no history of violations for this firm in the Small Business Development Department's database.

BACKGROUND

On March 3, 2006, the Prepaid Phone Card Vending Machine Agreements were fully executed by the County with the following two (2) firms: LAE, and Communitel/WTN (Communitel), a joint venture. The non-exclusive Prepaid Phone Card Vending Machines Agreement is for a term of three (3) years with 20 locations for each firm, for a total of 40. However, since the award, public demand for prepaid phone

cards has diminished due to the increased use of cellular telephones. As a result, both firms indicated their inability to pay the $600,500 MAG for the third year because of economic hardship. Communitel voluntarily ceased operations at MIA May 5, 2008. MDAD and LAE agreed to a reduced short-term MAG for May, June and July 2008, of $32,527.08 per month ($390,325 annual) based on a reduction in locations (from 20 to 13) while machines were repositioned and tested for sales volumes. Upon conclusion of the test, MDAD negotiated terms with LAE and, effective August 1, 2008, LAE began paying a MAG of $45,833.33 per month ($550,000 annually) for a total of 26 machines for the remainder of the Agreement, which expires in March 2009.

This First Amendment is retroactive because, while LAE needed immediate financial relief, it was necessary to reposition and test the machines, and subsequently negotiate new terms with LAE. It covers the changes in MAG payments and number and location of equipment during the period from May 2008 to expiration of the contract in March 2009.

To continue this service to the public and revenues to MDAD, it is recommended that the County adopt this retroactive First Amendment. By reducing the number of machines from 40 to 26, there will be reduction in terminal clutter while still maintaining the service levels MIA's passengers have come to expect.

Additionally, this amendment deletes the contract provision dealing with "Termination for Abandonment," with abandonment to be dealt with under the existing default and termination provisions of the contract. A standard Force Majeure clause has been added to this contract.

PROJECT:	Prepaid Phone Card Vending Machines
PROJECT LOCATION:	Miami International Airport
DESCRIPTION OF PROJECT:	The concessionaire shall provide for the equipment, installation, operation and maintenance of prepaid phone card vending machines. The locations shall be in the North, Central and South Terminals of MIA.
TERM OF CONTRACT:	Three (3) years, with a one (1) year renewal option
CONTRACT MEASURES:	30% DBE goal.
CONTRACT MEASURES ACHIEVED:	100% DBE certified.
RECOMMENDED MODIFICATION IN PAYMENTS TO THE COUNTY:	Concessionaire will pay a MAG in the third year as follows: $390,325 ($32,527.08/month) - May 1 to July 31, 2008, for 13 machines; $550,000 ($45,833.33/month) - August 1, 2008, through conclusion in March 2009 for 26 machines.
TERMINATION FOR ABANDONMENT:	Delete Section 11.01, "Termination For Abandonment" from Agreement.

COMPANY NAME:	Latin American Enterprises, Inc.
COMPANY PRINCIPALS:	Juan Jose Pino
GENDER, ETHNICITY AND OWNERSHIP BREAKDOWN:	100% Hispanic Male
LOCATION OF COMPANY:	1061 E. 23rd Street Hialeah, FL 33103
PREVIOUS AGREEMENTS WITH THE COUNTY IN LAST FIVE (5) YEARS:	LAE has been at MIA since June 15, 1995. There have been five permits/agreements, three of which have occurred in the last five years; all at MDAD.
LIVING WAGE:	No
INSPECTOR GENERAL:	Provisions included in the agreements
FUNDING SOURCE:	This is a revenue-generating agreement.
USER AGENCY:	Miami-Dade Aviation Department

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: January 22, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(A)(1)(A)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1)(A)
1-22-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING RETROACTIVE FIRST AMENDMENT TO THE NON-EXCLUSIVE AGREEMENT FOR PHONE CARDS AT MIAMI INTERNATIONAL AIRPORT BETWEEN MIAMI DADE COUNTY AND LATIN AMERICAN ENTERPRISES INC. WHICH PROVIDES FOR A PRORATED MINIMUM ANNUAL GUARANTEE OF $390,325.00 FROM MAY 1ST THROUGH JULY 31ST, 2008, AND A PRORATED MINIMUM ANNUAL GUARANTEE OF $550,000.00 FROM AUGUST 1ST 2008, AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXECUTE SAME, AND ANY RENEWAL OR TERMINATION PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby authorizes a Retroactive First Amendment to the Non-Exclusive Agreement for the Prepaid Phone Card Vending Machines at Miami International Airport between Miami-Dade County and Latin American Enterprises, Inc., in substantially the form attached hereto, which provides for a Minimum Annual Guarantee of $390,325.00 prorated from May 1st through July 31st, 2008, and a Minimum Annual Guarantee of $550,000.00 prorated from August 1st, 2008 through the completion of the Contract, subject to the terms and limitations thereof, and authorizes the County Mayor or his designee to execute same and to exercise the terms thereof, including renewal, termination or cancellation provisions.

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The foregoing resolution was offered by Commissioner ,

who moved its adoption. The motion was seconded by Commissioner

and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 22nd day of January, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. DMM

David M. Murray

RETROACTIVE FIRST AMENDMENT TO NON-EXCLUSIVE AGREEMENT FOR PREPAID PHONE CARD VENDING MACHINES AT MIAMI INTERNATIONAL AIRPORT

THIS RETROACTIVE FIRST AMENDMENT to the Non-Exclusive Agreement for Prepaid Phone Card Vending Machines (the "First Amendment") is made and entered into this _____ day of _____, 2008, by and between Miami-Dade County acting by and through its Aviation Department ("County" or "MDAD") and Latin American Enterprises, Inc. ("LAE or Concessionaire").

WHEREAS, by Resolution No. R-208-06, passed and adopted February 21, 2006, the Board of County Commissioners of Miami-Dade County, Florida authorized two separate Non-Exclusive Agreements for Prepaid Phone Card Vending Machines (the "Agreement") with Latin American Enterprises, Inc. and Communitel/WTN, ("Communitel/WTN") a Joint Venture, for the provision of such services at Miami International Airport.

WHEREAS, the Agreement set forth various terms and conditions applicable to the Concessionaire's use of the Prepaid Phone Card locations (the "Locations") at Miami International Airport ("MIA"), and LAE and Communitel/WTN were each to provide twenty (20) prepaid phone card vending machines.

WHEREAS, under the terms of the Agreement, MDAD significantly reduced the number of prepaid phone card vending machines at MIA from a total of forty (40) to twenty-six (26), and

WHEREAS, Communitel/WTN gave notice on April 29, 2008 to voluntary terminate its Agreement effective May 5, 2008; and

WHEREAS, MDAD and LAE agreed to an arrangement at the commencement of the third year of Agreement; and

NOW THEREFORE, in consideration of the premises, and terms and conditions of the Agreement, the parties to this First Amendment agree as follows:

1. The first sentence of sub-Article 1.04, "Locations", of the Agreement is hereby amended as follows:

   The County hereby provides to the Concessionaire 26 Locations, each Location measuring no more than six (6) square feet, as shown on Exhibit A, "Phone Card Machines Location List", solely for the purpose of operating and maintaining Prepaid Phone Cards Vending Machines.

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2. Article 3, "Payments and Reports", sub-article 3.01, "Minimum Annual Guarantee", of the Agreement is hereby amended as follows:

MINIMUM ANNUAL GUARANTEE: The Concessionaire shall pay to the County beginning on the Commencement Date, a Minimum Annual Guarantee in US funds as follows:

Year 1 $250,500.00
Year 2 $250,500.00
Year 3 $390,325.00 Effective May 1, 2008
Year 3 $550,000.00 Effective August 1, 2008

The Minimum Annual Guarantee shall be prorated and payable in twelve (12) equal monthly payments, (Minimum Monthly Guarantee), in U.S. funds, on the first day of each month, in advance, and without billing, plus applicable taxes as required by law.

3. Section 11.01, "Termination For Abandonment" of the Agreement is hereby deleted from the Agreement and replaced with:

Section 11.01, "Force Majeure" Strictly in relation to the obligations of each party to the other under this Agreement, and not for any other purpose or for any benefit of a third party, each party shall be excused from the timely performance of their respective obligations or undertakings provided in this Agreement, if the performance of such obligations or undertakings is prevented or delayed, retarded or hindered by strikes, lockouts, boycotts, actions of labor unions, labor disputes, labor disruptions, work stoppages or slowdowns, unless involving employees of the Operator, embargo's, general shortages of labor, equipment, locations, materials or supplies in the open market, acts of God, acts of the public enemy, acts of governmental authority, including, without limitation, the FAA, the DOT, the TSA, the EPA, the DOJ, or civil and defense authorities, extreme weather conditions, war (declared or undeclared), invasion, insurrection, terrorism, riots, rebellion or sabotage.

4. In all other respects, the Agreement shall remain in full force and effect in accordance with the terms and conditions specified herein.

IN WITNESS WHEREOF, the parties have executed this Retroactive First Amendment to the Agreement the date and year first above written.

CONCESSIONAIRE

Latin American Enterprise
(Legal Name of Corporation)

By: _____
Authorized Officer - Signature

Name: Juan J. Pino

President
(Type Name & Title)

ATTEST:
Secretary_____
(Signature and Seal)

_____
(Type Name & Title)

BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

By: _____
Mayor

Approved for Form
and Legal Sufficiency

Attest: Harvey Ruvin, Clerk

_____
Assistant County Attorney

By: _____
Deputy Clerk

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EXHIBIT A

PREPAID PHONE CARD VENDING MACHINES
LATIN AMERICAN ENTERPRISES
LOCATION SUMMARY

	MACHINE #	LOCATION – DESCRIPTION
1.	5983	Conc C - 2 Fl - front of cafeteria - By Public Phones
2.	5970	Term C – 2 Fl – Cluster of Public Phones
3.	5969	Term D - 1Fl - by Public Phones
4.	5968	Term D -2 Fl - front of la Carreta, behind elevators
5.	5964	Term D - 2 Fl – across la Carreta right behind café Versailles
6.	5979	Term D - 2 Fl - Front of Inmotion
7.	5961	Conc D - 2 F - Door D34
8.	5982	Conc D - 2 Fl - next to Toilets and ATM
9.	5981	Conc D - 2 Fl - D-43
10.	5974	Conc D- 2 Fl – D-48
11.	5977	Term E - 1 Fl - Intl Arrivals
12.	5985	Term E – 1 Fl - Intl Arrival by Public Phones
13.	5967	Term E -1 Fl - Intl Arrivals next to ATM
14.	5965	Term E - 2 Fl - front of Barber Shop
15.	5972	Term E - 2 Fl - Bookstore
16.	5978	Term E - 2 Fl – AeroMexico
17.	5980	Term E - 2 Fl - by coin machine and stairs.
18.	5960	Conc E - 2 Fl - Door E9
19.	5962	Conc E - 2 Fl – Sat. - Right Side
20.	5971	Conc E - 2 Fl - Sat - Left side
21.	5973	Conc E - 2 Fl - Pizza Hut
22.	5975	Term F - 2 Fl - Stairs and Public Phones
23.	5976	Term G - 2 Fl - by Information Desk
24.	5984	Term H - 2 Fl - front of Delta
25.	5963	Conc J – 2 Fl - Door J 9
26.	5966	Term J - 2 Fl - front of Air France

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